

transfer of the loan under § 36.4820(a), or other accounting to the Secretary, the holder shall not be entitled to treat repayments theretofore made as liquidated damages, or rentals, or otherwise than as payments on the indebtedness, notwithstanding any provision in the note, or mortgage, or otherwise, to the contrary.

(Authority: 38 U.S.C. 3703(c), 3720, 3732)

**§ 36.4826 Subrogation and indemnity.**

(a) The Secretary shall be subrogated to the contract and the lien or other rights of the holder to the extent of any sum paid on a guaranty or on account of an insured loss, which right shall be junior to the holder's rights as against the debtor or the encumbered property until the holder shall have received the full amount payable under the contract with the debtor. No partial or complete release by a creditor shall impair the rights of the Secretary with respect to the debtor's obligation.

(b) The holder, upon request, shall execute, acknowledge and deliver an appropriate instrument tendered for that purpose, evidencing any payment received from the Secretary and the Secretary's resulting right of subrogation.

(c) The Secretary shall cause the instrument required by paragraph (b) of this section to be filed for record in the office of the recorder of deeds, or other appropriate office of the proper county, town or State, in accordance with the applicable State law. The filing or failure to file such instrument for record shall have the legal results prescribed by the applicable law of the State where the real or personal property is situated, with respect to filing or failure to so file mortgages and other lien instruments and assignments thereof. The references herein to "filing for record" include "registration" or any similar transaction, by whatever name designated when title to the encumbered property has been "registered" pursuant to a Torrens or other similar title registration system provided by law.

(d) As a condition to paying a claim for an insured loss the Secretary may require that the loan, including any security or judgment held therefor, be assigned to the extent of such payment,

and if any claim has been filed in bankruptcy, insolvency, probate, or similar proceedings such claim may likewise be required to be so assigned.

(e) Any amounts paid by the Secretary on account of the liabilities of any veteran guaranteed or insured under the provisions of 38 U.S.C. chapter 37 shall constitute a debt owing to the United States by such veteran. Before a liquidation sale, an official authorized to act for the Secretary under provisions of § 36.4845 may approve a complete or partial release of the Secretary's right to collect a debt owing to the United States under this paragraph and/or under paragraph (a) of this section as follows:

(1) *Complete release.* VA will approve a complete release if an official authorized to act for the Secretary under § 36.4845 determines that all of the following are true:

(i) The loan default was caused by circumstances beyond the control of the obligor; and

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default; and

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure, and, either:

(A) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all or part of the anticipated debt within six years after the liquidation sale and still provide the necessities of life for himself or herself and his or her family; or,

(B) In consideration for a release of the Secretary's collection rights the obligor completes, or VA is enabled to authorize, an action which reduces the Government's claim liability sufficiently to offset the amount of the anticipated indebtedness which would otherwise be established pursuant to this paragraph and likely be collectable by VA after foreclosure in view of the obligor's financial situation. Such actions would include termination of the loan by means of a deed-in-lieu of foreclosure, private sale of the property for less than the indebtedness

with a reduced claim paid by VA for the balance due the loan holder, or enabling VA to authorize the holder to elect a more expeditious foreclosure procedure when such an election would result in the legal release of the obligor's liability; or

(C) The obligor being released is not the current titleholder to the property and there are no indications of fraud, misrepresentation, or bad faith on the obligor's part in disposing of the property.

(2) *Partial release.* In the event of a partial release, the amount of indebtedness established will be such that the obligor's financial situation permits repayment of the debt to the Government in regular monthly installments of principal plus interest over a five year period commencing within one year after the date the promissory note is executed, except in those cases in which a lump sum settlement appears to be in the best interest of the Government or in which it appears the obligor may reasonably expect significant changes in his or her financial situation which would permit higher payments to be made during later periods of the life of the note. VA may authorize a partial release if an official authorized to act for the Secretary under §36.4845 determines that all of the following are true:

(i) The loan default was caused by circumstances beyond the control of the obligor; and,

(ii) There are no indications of fraud, misrepresentation or bad faith on the part of the obligor in obtaining the loan or in connection with the loan default; and,

(iii) The obligor cooperated with VA in exploring all realistic alternatives to termination of the loan through foreclosure; and,

(iv) Review of the obligor's current financial situation and prospective earning potential and obligations indicates there are no realistic prospects that the obligor could repay all of the anticipated debt within six years of the liquidation sale while providing the necessities of life for himself or herself and his or her family; and,

(v) The obligor executes a written agreement acknowledging his or her liability to VA under this paragraph and

executes a promissory note which provides for regular amortized monthly payments of an amount determined by VA in accordance with paragraph (e)(3) of this section including interest on the total amount payable at the rate in effect for Loan Guaranty liability accounts at the time of execution, or, the obligor agrees to other terms of repayment acceptable to VA including payment of a lump sum in settlement of his or her obligation under this paragraph.

(3) *Review of obligor's financial situation.* For purposes of authorizing a complete or partial release under this paragraph, a VA official reviewing an obligor's financial situation will consider all of the following:

(i) The obligor's current and anticipated family income based on employment skills and experience;

(ii) The obligor's current short-term and long-term financial obligations, including the obligation to repay the Government which must be afforded consideration at least equal to his or her consumer debt obligations;

(iii) A current credit report on the obligor;

(iv) The obligor's assets and net worth; and

(v) The required balance available for family support used in underwriting VA guaranteed loans in the area.

(4) Determinations made under paragraphs (e)(1) and (2) of this section are intended for the benefit of the Government in reducing the amount of claim payable by VA and/or avoiding the establishment of uncollectible debts owing to the United States. Such determinations are discretionary on the part of VA and shall not constitute a defense to any legal action to terminate the loan nor vest any appellate right in an obligor which would require further review of the case.

(Authority: 38 U.S.C. 501, 3703(c)(1), 5302)

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him or her under 38 U.S.C. chapter 37, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of

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all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as may be deemed appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 3713. The assumption of full liability for repayment of the loan by the transferee of the property must be evidenced by an agreement in writing in such form as the Secretary may require. Release of the veteran from liability to the Secretary will not impair or otherwise affect the Secretary's guaranty or insurance liability on the loan, or the liability of the veteran to the holder. Any release of liability granted to a veteran by the Secretary shall inure to the spouse of such veteran. The release of the veteran from liability to the Secretary will constitute the Secretary's prior approval to a release of the veteran from liability on the loan by the holder thereof.

(Authority: 38 U.S.C. 3713)

(g) If any veteran disposes of residential property securing a guaranteed or insured loan obtained under 38 U.S.C. chapter 37, without receiving a release from liability with respect to such loan under 38 U.S.C. 3713 and a default subsequently occurs which results in liability of the veteran to the Secretary on account of the loan, the Secretary may relieve the veteran of such liability if he determines that:

(1) A transferee either immediate or remote is legally liable to the Secretary for the debt of the original veteran-borrower established after the termination of the loan, and

(2) The original loan was current at the time such transferee acquired the property, and

(3) The transferee who is liable to the Secretary is found to have been a satisfactory credit risk at the time he or she acquired the property.

(h)(1) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the prop-

erty, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(i) The proposed purchaser is credit-worthy;

(ii) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and

(iii) The payments on the loan are current.

(2) Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan. This does not apply if the approval for the assumption is granted upon special appeal to avoid immediate foreclosure.

(i) If a veteran requests a release of liability under paragraph (f) of this section, or if a borrower requests a release of liability pursuant to § 36.4809(c)(1)(vii), a holder described in the first sentence of § 36.4803(1)(1)(i) is authorized to and must make all decisions regarding the credit-worthiness of the transferee, subject to the right of a transferee to appeal any denial to the Secretary within 30 days of being notified in writing of the denial by the holder or servicer. The procedures and fees specified in §§ 36.4803(1)(1)(i) and 36.4813(d)(8) applicable to decisions under 38 U.S.C. 3714 shall also apply to decisions specified in this paragraph.

(Authority: 38 U.S.C. 3703(c), 3713 and 3714)

(The Office of Management and Budget has approved the information collection requirements in this section under control number 2900-0112.)

### § 36.4827 Release of security.

(a)(1) Except upon full payment of the indebtedness, or except as provided in paragraph (a)(2) of this section or in paragraphs (e) and (f) of § 36.4822, the holder shall not release a lien or other right in or to real property held as security for a guaranteed or insured loan, or grant a fee or other interest in such